

Memorandum 84-20

Subject: Study L-618 - Uniform Transfers to Minors Act

Assembly Bill 2492 was introduced by Assembly Member Sher to effectuate the Commission's Recommendation Relating to the Uniform Transfers to Minors Act. This recommendation proposes that California enact the Uniform Act with some revisions. The revisions would retain provisions added in California to the Uniform Gifts to Minors Act. A copy of the bill is attached.

The major change the Uniform Act would make in existing California law relates to the time when the custodianship terminates. Under existing California law, the custodianship terminates when the minor attains the age of 18 years. The Uniform Act would increase the age to 21 years if the custodial property is a lifetime gift or a gift made by a will or trust that specifically provides that the gift is to a custodian under the Uniform Transfers to Minors Act. The age of 18 would be retained for custodianships that are a substitute for a guardianship.

When the bill was heard by the Assembly Committee on Judiciary, the Chairman and other members of the Committee were unwilling to approve the change made by the Uniform Act that would increase the age of termination from 18 to 21 years of age. The bill was approved by the Committee after it was amended to provide that the custodianship terminates in every case when the minor attains the age of 18 years.

Assembly Member Sher and I believe that it would be acceptable to the Assembly Judiciary Committee members if the bill were revised to provide for termination of the custodianship at age 18 but also to permit the person making a lifetime gift or a gift by a will or trust to provide specifically that the custodianship would continue after the minor attained 18 years of age until the minor attained a specified age (not in excess of 21 years of age). Assembly Member Sher is checking with the Committee Chairman to determine if this is acceptable to him. If it is, Assembly Member Sher plans to amend the bill before it comes to vote on the Assembly floor. A draft of a revision of one section of the bill and a new section that would be added to the bill is attached as Exhibit 1. This draft would permit the donor to accomplish what is sought by the Uniform Act--to continue the custodianship until age 21--but would be a nonuniform provision.

If California is not going to have the Uniform Act provision on the time when the custodianship terminates, consideration should be given to making the California version of the Uniform Act more flexible. If the donor is to be given authority to select the age at which the custodianship terminates, why not permit the donor to provide that the custodianship continue to any age after 18 but not after the time the minor attains the age of 25 if the gift is made by will or trust. (To avoid tax problems a custodianship created by a lifetime gift would be subject to the requirement that it must terminate when the minor attains the age of 21 years.) Many testators and persons who establish trusts would prefer that the property remain in a custodianship until the minor attains the age of 25 years or until the minor attains some other specified age in excess of 21 years of age but less than 25 years of age. Why not provide this flexibility? The major objection is that it makes the statute somewhat more complex. See Exhibit 2 attached for a draft of provisions that would provide this statutory scheme.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

REVISIONS OF ASSEMBLY BILL 2492Revise existing Section 3920 to read:

3920. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of the following:

(a) The minor's attainment of 18 years of age unless the time of transfer of the custodial property to the minor is delayed under Section 3920.5 to a time after the time the minor attains the age of 18 years.

(b) The time specified in the transfer pursuant to Section 3909 if the time of transfer of the custodial property to the minor is delayed under Section 3920.5 to a time after the time the minor attains the age of 18 years.

(c) The minor's death.

Add new Section 3920.5 to read:

3920.5. (a) Subject to the requirements and limitations of this section, the time for transfer to the minor of custodial property transferred under Section 3904 or 3905 may be delayed until a specified time not later than the time the minor attains 21 years of age, which time shall be specified in the transfer pursuant to Section 3909.

(b) To specify a delayed time for transfer to the minor of the custodial property, the words "as custodian for _____ under
(name of minor)
the California Uniform Transfers to Minors Act, such custodianship to continue until the minor attains the age of _____
(age not less than 18 nor
_____ years" shall be substituted in substance for the words
more than 21)

"as custodian for _____ under the California Uniform Transfers
(name of minor)
to Minors Act" in making the transfer pursuant to Section 3909.

(c) The time for transfer to the minor of custodial property transferred under Section 3905 may be delayed under this section only if the governing will or trust provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 21 years of age, and in such case the governing will or trust shall determine the time to be specified by the personal representative or trustee in the transfer pursuant to Section 3909.

Exhibit 2

REVISIONS OF ASSEMBLY BILL 2492

Revise existing Section 3920 to read:

3920. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of the following:

(a) The minor's attainment of 18 years of age unless the time of transfer of the custodial property to the minor is delayed under Section 3920.5 to a time after the time the minor attains the age of 18 years.

(b) The time specified in the transfer pursuant to Section 3909 if the time of transfer of the custodial property to the minor is delayed under Section 3920.5 to a time after the time the minor attains the age of 18 years.

(c) The minor's death.

Add new Section 3920.5 to read:

3920.5. (a) Subject to the requirements and limitations of this section:

(1) The time for transfer to the minor of custodial property transferred under Section 3904 may be delayed until a specified time not later than the time the minor attains 21 years of age, which time shall be specified in the transfer pursuant to Section 3909.

(2) The time for transfer to the minor of custodial property transferred under Section 3905 may be delayed until a specified time not later than the time the minor attains 25 years of age, which time shall be specified in the transfer pursuant to Section 3909.

(b) The time for transfer to the minor of custodial property transferred under Section 3905 may be delayed under this section only if the governing will or trust provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 25 years of age, and in such case the governing will or trust shall determine the time to be specified by the personal representative or trustee in the transfer pursuant to Section 3909.

(c) To specify a delayed time for transfer to the minor of the custodial property, the words "as custodian for _____ under
(name of minor)
the California Uniform Transfers to Minors Act, such custodianship to continue until the minor attains the age of _____ years" shall be substituted in substance for the words "as custodian for _____
(name of minor)
under the California Uniform Transfers to Minors Act" in making the transfer pursuant to Section 3909. If the space for specifying the age to which the custodianship continues is left blank, the custodianship does not continue after the minor attains the age of 18 years. If an age in excess of that permitted under this section is inserted in the space for specifying the age, the custodianship for the custodial property transferred does not continue after the minor attains the maximum age permitted under this section.